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No. 22

# In the Supreme Court of the United States

OCTOBER TERM, 1940

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS

*v.*

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

On Appeal from the District Court of the United States for the Middle District of Pennsylvania

## SUPPLEMENTAL BRIEF FOR APPELLANTS

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## CASES AND STATUTES CITED

### CASES


| | Page |
|---|---|
| Creswill v. Grand Lodge K. P., 225 U. S. 246, 56 L. Ed. 1074 | 3 |
| Fong Yue Ting v. United States, 149 U. S. 698, 37 L. Ed. 905 | 4 |
| Henderson v. Wickham, 92 U. S. 259, 23 L. Ed. 543 | 5 |
| Kentucky v. Powers, 201 U. S. 1, 50 L. Ed. 633 | 3 |
| Ohio ex rel. v. Deckebach, 274 U. S. 392, 71 L. Ed. 1115 | 4 |


### STATUTES


| | |
|---|---|
| Civil Rights Act of 1870, 16 Stat. 140, now appearing in Section 1977 of Revised Statutes (8 U. S. C. A. 41) | 2 |

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## SUPPLEMENTAL BRIEF FOR APPELLANTS

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### ARGUMENT

We file this brief in reply to point No. III only of appellees' argument in which it is stated that the Pennsylvania Alien Registration Act is in conflict with

Section 16 of the Civil Rights Act of 1870, 16 Stat. 140, now appearing in Section 1977 of the Revised Statutes (8 U. S. C. A. 41). This point is first raised in the argument of the Solicitor General, of which point appellants had notice only a few days before the case was called for argument.

The Civil Rights Act of 1870 is known as the "Enforcement Act" and was passed for the more effective enforcement of the Fourteenth Amendment, and thus the act does not stand any higher than the Fourteenth Amendment, but rather is subordinated to it.

If the Pennsylvania statute is justifiable under the police power of the State, and the appellants contend that it is, the statute is not in conflict with the provisions of the Fourteenth Amendment, and hence cannot be in conflict with the congressional act. If the Fourteenth Amendment does not invalidate the Pennsylvania Act, the Act of 1870 cannot do so, and hence we come back to the original position of appellants and appellees that the Pennsylvania Alien Registration Act stands or falls in so far as it does not or does violate the Fourteenth Amendment.

Appellants contend that the classification under the Pennsylvania statute is a reasonable one, and that the act is justifiable under the police power of the State; that even civil rights and liberties are limited by the necessity for public action which fluctuates between conditions of peace and war.

The brief of the Solicitor General challenges the right of the Commonwealth of Pennsylvania to pass the act in question because of the Civil Rights legislation passed to effectuate the Fourteenth Amendment, which the Government contends covers this case; and particularly by reason of those Federal statutes which declare that all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, to be parties, to give evidence, and to enjoy the full and equal benefit of all laws and proceedings for the security of persons and property that is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. U. S. C. A. Title 8, Section 41.

It would seem that the Fourteenth Amendment to the Federal Constitution was intended to secure to all persons the civil rights which the white race enjoys but no greater rights than those enjoyed by the white race. CRESWILL *v.* GRAND LODGE K. P., 225 U. S. 246, 56 L. Ed. 1074.

But this amendment was not confined, of course, to the protection of resident or non-alien citizens. This application is to all persons without regard to any difference of race or color or nationality. KENTUCKY *v.* POWERS, 201 U. S. 1, 50 L. Ed. 633.

Aliens residing in the United States are entitled, so long as they are permitted by the Federal Government, to remain in the country, to the safeguard of the

Constitution, to the protection of the laws in regard to their rights of person and property and, therefore, are impressed with consequent civil and criminal responsibility. FONG YUE TING *v.* UNITED STATES, 149 U. S. 698, 37 L. Ed. 905. See also dissenting opinion in FONG YUE TING *v.* UNITED STATES, 149 U. S. 754, 37 L. Ed. 927.

The logic, however, of the cases on the Fifth Amendment, the Thirteenth Amendment and the Fourteenth Amendment to the Constitution does not place the alien upon a higher plane than that of citizens. It is certainly the law that an alien is not entitled to the privileges and immunities of a citizen strictly as such under the Constitution, yet he is a "person" to whom the State cannot deny the equal protection of its laws. The provisions of the Fourteenth Amendment certainly are universal in their application to all persons in their right to life, to liberty and property. However, aliens are under no special constitutional protection which forbids a classification, otherwise justified simply because the limitation of the class falls along the line of nationality. The difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of the police power. This is clearly shown by the case of OHIO, EX REL. *v.* DECKEBACH, 274 U. S. 392, 71 L. Ed. 1115, and a long line of cases cited by appellants in their brief.

The able Solicitor General tried to point out that possibly the Civil Rights Bill of 1870 was not considered

when that case was heard before this Court. But the court said:

> "Although the Fourteenth Amendment has been held to prohibit plainly irrational discriminations against aliens * * * it does not follow that alien race and allegiance may not bear in some instances such a relation to a legitimate object of legislation as to be made the basis of a permitted classification."

This Civil Rights Act, to which attention has been called in the brief of the Solicitor General, clearly does not mean that the alien and the citizen are upon the same basis so far as rights are concerned. Uniformly this Court has held that there are restrictions on aliens appropriately made by the various states, such as to vote, to possess firearms, to be employed on public works, to sell intoxicating liquors, and many other rights to which we have called attention in our brief.

It is unreasonable to assume that the Commonwealth of Pennsylvania would enforce its Alien Registration Law in the annoying manner described by appellees. Not only is the State bound by the Fourteenth Amendment and the Federal Civil Rights Law of 1870 passed in pursuance thereto, but within its own Constitution it has express provisions granting civil rights. It is obvious that no state law could be enforced in such a way as to violate these fundamental principles.

The state, as was said in HENDERSON *v.* WICKHAM, 92 U. S. 259, 23 L. Ed. 543, has a right to obtain a roll or list of its alien population, and it is appellants'

contention that the state certainly has need of such a list, not only to better enforce its valid state laws restricting and limiting aliens, but also for the more effective internal protection of its people and property.

Respectfully submitted,

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